

Minnesota Judicial Branch Policy

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Guardian Ad Litem System Program Standards

The Conference of Chief Judges met on November 30, 2004 and considered issues raised with respect to the guardian ad litem system program standards.

With respect to that subject and the questions raised, and with the consent and approval of the Conference of Chief Judges and Assistant Chief Judges, the State Court Administrator hereby issues the following administrative policy:

I. MINIMUM QUALIFICATIONS FOR GAL (Former Rule 902 of the Rules of GAL Procedure)

Before a person may be recommended for service as a guardian ad litem the person must satisfy the following minimum qualifications:

- (a) have an abiding interest in children and their rights and needs;
- (b) have sufficient listening, speaking, and writing skills in the person's primary language to successfully conduct interviews, prepare written reports, and make oral presentations;
- (c) not have been involved in any conduct or activity that would interfere with the person's ability to discharge the duties assigned by the court;
- (d) have knowledge and an appreciation of the ethnic, cultural, and socio-economic backgrounds of the population to be served;
- (e) be available for at least 18 months and have sufficient time, including evenings and weekends, to gather information, make court appearances, and otherwise discharge the duties assigned by the court;
- (f) have the ability to (1) relate to a child, family members, and professionals in a careful and confidential manner; (2) exercise sound judgment and good common sense; and (3) successfully discharge the duties assigned by the court;
- (g) not have been removed from a panel of approved guardians ad litem following an unsatisfactory performance evaluation; and
- (h) have satisfactorily completed the pre-service training requirements set forth in these Standards, and demonstrated a comprehension of the responsibilities of guardians ad litem as set forth in the Rules of Guardian Ad Litem Procedure.

II. SELECTION OF GUARDIANS AD LITEM (Former Rule 903)

1. Recruitment (Former Rule 903.01)

The recruitment of persons to apply to be guardians ad litem shall be announced to the general public. Public announcements shall be made by, or under the direction of, the GAL program manager. Every public announcement shall contain an equal opportunity statement, and a reasonable, good faith effort shall be made to solicit applications from individuals whose gender and ethnic, racial, cultural, and socio-economic backgrounds reflect the diversity of the population the applicant is expected to serve.

Announcements shall be provided to tribal social service agencies and to public agencies and private organizations serving ethnic and cultural communities, and shall be placed in publications directed to ethnic and cultural communities in the county or counties to be served.

2. Application Process (Former Rule 903.02)

Any person who desires to become a guardian ad litem shall be required to submit a completed State Court employment and Supplemental GAL application. The application shall address the minimum qualifications set forth in these standards. Every completed application must be accompanied by a signed release of information authorization sufficient to enable the program coordinator to independently verify the facts set forth in the application and freely check into the applicant's background and qualifications.

3. Screening Process (Former Rule 903.03)

Before an applicant is approved by the GAL program manager for inclusion on a panel of guardians ad litem maintained by the State GAL Program Office: (a) the written application shall be reviewed, (b) the applicant shall be interviewed, (c) the applicant's references shall be contacted, (d) a criminal history and personal background check shall be completed, and the State GAL Program Office shall be contacted to see if the applicant has been removed from the approved state panel for cause.

4. Panel of Approved Guardians Ad Litem (Former Rule 903.04)

Each District GAL Manager shall maintain a current panel of approved guardians ad litem, and shall keep the State GAL Program Office updated as to the names on the panel. To be included on the panel, a guardian ad litem shall satisfy the minimum qualifications set forth in these Standards.

5. Factors to be Considered in Selection of GAL for Case (Former Rule 904.03)

All pertinent factors shall be considered in the identification and selection of the guardian ad litem to be appointed, including the age, gender, race, cultural heritage, and needs of the child; the cultural heritage, understanding of ethnic and cultural differences, background, and expertise of each available guardian ad litem, as those factors relate to the needs of the child; the caseload of each available guardian ad litem; and such other circumstances as may reasonably bear upon the matter.

In every case, the goal is the prompt appointment of an independent guardian ad litem to advocate for the best interests of the child. To be appointed a guardian ad litem must meet the minimum qualifications set forth in these Standards, must have no conflict of interest regarding the case, and must be listed on a panel of approved guardians ad litem.

The parties to a case may recommend that a particular guardian ad litem be appointed, but may not, by agreement, select, or preclude the selection of a particular guardian ad litem for appointment. No person shall be appointed as a guardian ad litem in any case governed by the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act unless that person demonstrates knowledge and an appreciation of the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

III. OATH OR AFFIRMATION (Former Rule 905)

Prior to performing the responsibilities of a guardian ad litem, the guardian ad litem shall take an oath or make an affirmation. At the discretion of the program coordinator or District GAL Manager, the oath may be taken or the affirmation made at the time the guardian ad litem is placed on a panel of approved guardians ad litem or at the time the guardian ad litem is appointed to a particular case, or at both times.

IV. SUPERVISION AND EVALUATION OF GUARDIANS AD LITEM; REMOVAL FROM PANEL (Former Rule 906)

1. Support, Advice, and Supervision (Former Rule 906.01)

The program coordinator and/or District GAL Manager shall be responsible to provide support, advice, and supervision to guardians ad litem serving in the district GAL program.

2. Performance Evaluation (Former Rule 906.02)

The District GAL Manager, in conjunction with the program coordinator(s), shall provide for the periodic evaluation of the performance of guardians ad litem serving in the judicial district. The evaluation shall be objective in nature and shall include a review of the cases assigned to the guardian ad litem; a review of the guardian ad litem's compliance with the continuing education requirements set forth in these Standards; inquiries to judges presiding over cases in which the guardian ad litem was appointed; a review of complaints filed against the guardian ad litem, if any; follow-up background checks, if warranted; and such other information as may have come to the attention of the program coordinator.

The evaluation shall be undertaken, at least in part, by means of a written performance evaluation instrument. A written record of the completed evaluation shall be maintained in the guardian ad litem's file. The performance of each guardian ad litem shall be evaluated once during the first six months after the guardian ad litem is first appointed as a guardian ad litem and, thereafter, at least annually.

3. Removal from Panel (Former Rule 906.03)

On the basis of a performance evaluation, or for other necessary and justifiable cause, the program coordinator and/or District GAL Manager, in consultation with the State GAL Program Manager, shall determine whether to retain the guardian ad litem on the panel of approved guardians ad litem.

A guardian ad litem removed from a panel of approved guardians ad litem following an unsatisfactory performance evaluation, or for any other reason, shall not be eligible for service as a guardian ad litem in any judicial district.

When a guardian ad litem is removed from a panel of approved guardians ad litem, notice of

the removal shall be given by the District GAL Manager to the Guardian ad Litem and to the State Court Guardian ad Litem Program Office. The State Court Guardian ad Litem Program Office shall maintain a list of guardians ad litem removed from panels of approved guardians ad litem. A guardian ad litem who has been removed from the panel of approved guardians ad litem may submit in writing to the chief judge a request that the chief judge review the decision of the program coordinator or District GAL Manager.

A guardian ad litem may receive an unsatisfactory performance evaluation and/or be removed from the panel of guardians ad litem for failure to comply with a directive of the court, including the provisions of the order appointing the guardian ad litem; failure to comply with the responsibilities set forth in the Rules of GAL Procedure; or for any other reason deemed appropriate by the program coordinator or District GAL Manager.

In appropriate cases, as an alternative to removal from the panel of guardians ad litem, the District Manager or program coordinator may place the guardian ad litem on probation, require the guardian ad litem to complete a mentorship, require the guardian ad litem to attend additional training, or take other action deemed appropriate by the program coordinator or District GAL Manager under the circumstances.

V. GENERAL RESPONSIBILITIES OF GUARDIANS AD LITEM; OTHER ROLES DISTINGUISHED (Former Rule 908)

1. General Responsibilities (Former Rule 908.01)

Consistent with the responsibilities set forth in Minnesota Statutes section 260.155, subdivision 4(b), and section 518.165, subdivision 2a, other applicable statutes and rules of court, and the appointment order entered pursuant to GAL Rules, in every family court and juvenile court case in which a guardian ad litem is appointed, the guardian ad litem shall perform the responsibilities set forth in clauses (a) to (n):

- (a) The guardian ad litem shall advocate for the best interests of the child.

Note on Contact with the Child.

The guardian ad litem must have sufficient contact with the child to ascertain the best interests of the child. The frequency and duration of contact will vary from child to child depending upon the nature of the case, the age of the child, and the needs of the child. There is no specific benchmark with respect to frequency of contact.

- (b) The guardian ad litem shall exercise independent judgment, gather information, participate as appropriate in negotiations, and monitor the case, which activities must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case.
- (c) The guardian ad litem shall, as appropriate to the case, make written and/or oral reports to the court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based.
- (d) The guardian ad litem shall complete work in a timely manner, and advocate for

- timely court reviews and judicial intervention, if necessary.
- (e) The guardian ad litem shall be knowledgeable about community resources for placement, treatment, and other necessary services.
 - (f) The guardian ad litem shall maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child.
 - (g) The guardian ad litem shall, during service as a guardian ad litem, keep all records, notes, or other information confidential and in safe storage. At the conclusion of service, the guardian ad litem shall keep or destroy the notes and records in accordance with the requirements of the guardian ad litem program.
 - (h) The guardian ad litem shall complete continuing education requirements, and seek advice as necessary from the program coordinator or, if the program coordinator is not available, from the District GAL Manager.
 - (i) The guardian ad litem shall treat all individuals with dignity and respect while carrying out her or his responsibilities.
 - (j) The guardian ad litem shall be knowledgeable about and appreciative of the child's religious background and racial or ethnic heritage, and sensitive to the issues of cultural and socio-economic diversity, and in all cases governed by the Indian Child Welfare Act or the Minnesota Indian Family Heritage Preservation Act shall apply the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.
 - (k) The guardian ad litem shall use the guardian ad litem appointment and authority appropriately to advocate for the best interests of the child, avoid any impropriety or appearance of impropriety, and not use the position for personal gain.
 - (l) The guardian ad litem shall comply with all state and federal laws regarding the reporting of child abuse and/or neglect.
 - (m) The guardian ad litem shall inform individuals contacted in a particular case about the role of the guardian ad litem in the case.
 - (n) The guardian ad litem shall ensure that the appropriate appointment and discharge documents are timely filed with the court.

Considering the Child's Wishes.

The role of a guardian ad litem is to advocate for the best interests of the child, which interests may or may not conflict with the wishes of the child. In arriving at a recommendation as to the child's best interests, one factor that may be considered by the guardian ad litem, as appropriate to each case, is the wishes of the child as to the matters that are before the court. In that regard, the guardian ad litem, as appropriate to each case, may attempt to ascertain the child's wishes regarding the matters that are before the court.

If the guardian ad litem determines that it is appropriate to ascertain the child's wishes, careful interviewing techniques must be used to elicit those wishes without creating conflicts for the child. Directly asking the child for her or his opinion regarding the matters before the court is not recommended, as doing so may create conflict for the child. For example, directly asking the child for a custody preference is not recommended as it places the child in the position of choosing between two parents for whom the child may care deeply. In addition, if the court implements the child's expressed preference, the child may feel guilty or

may feel that the other parent has been betrayed. Instead, questions should be open ended and the guardian ad litem should be prepared to listen carefully.

If the wishes of the child are ascertained, the guardian ad litem should use discretion in deciding whether to communicate those wishes to the court, and/or to the child's parents, and may do so if it is in the child's best interests. Depending upon a number of factors, including the child's age, culture, maturity, emotional stability, and ability to reason, communicate, and understand, the guardian ad litem must be prepared to choose an appropriate course of action. This may include simply listening to the child's wishes, listening and reporting them to the court if appropriate, reporting them to the court even if the guardian ad litem considers them not in the child's best interests, or requesting the court to appoint independent legal counsel for the child for the purpose of representing and advocating for the child's wishes.

If the guardian ad litem determines that the wishes of the child conflict with the guardian ad litem's recommendation as to what is in the child's best interests, thereby creating a conflict of interest between the child and the guardian ad litem pursuant to the Minnesota Rules of Juvenile Procedure 3.07 Subd. 2 and the Minnesota Rules of Juvenile Protection Procedure 25.02 Subd. 3, the guardian ad litem shall notify the child, the child's counsel if any, and the court of the existence of the conflict of interest and, if necessary, shall seek appointment of separate counsel to represent the guardian ad litem.

2. Other Roles Distinguished (Former Rule 908.02)

In a case in which a guardian ad litem is serving pursuant to the Rules of Guardian Ad Litem Procedure, the guardian ad litem may not be ordered to, and may not perform the role of mediator, as that role is prescribed in Minnesota Statutes section 518.619 and Rule 310 of the Minnesota Rules of Family Court Procedure, or visitation expeditor, as that role is prescribed in Minnesota Statutes sections 518.619 and 518.1751.

3. Inappropriate Guardian Ad Litem Responsibilities (Former Comment to Rule 908)

The provision of direct services to the child or the child's parents is generally beyond the scope of the guardian ad litem's responsibilities. Therefore, except in special circumstances, the appointing court should not order the guardian ad litem, and the guardian ad litem should not undertake, to provide such direct services. Providing such direct services could create a conflict of interest and/or cause a child or family to become dependent upon the guardian ad litem for services that should be provided by other agencies or organizations. The guardian ad litem may locate and recommend services for the child and family, but should not routinely deliver services.

Specifically, a guardian ad litem should not: (a) provide "counseling" or "therapy" to a child or parent; (b) foster a friendship or "big brother/big sister" relationship with a child or parent by inviting the child or parent into the home of the guardian ad litem, routinely entertaining the child or parent at the movies, or giving money or gifts to the child or parent; (c) give legal advice or hire an attorney for the child or parent; (d) supervise visits between the child and parent or third parties, except as ordered by the court; (e) routinely provide transportation for the child or parent, except as ordered by

the court; (f) provide child care services for the child; (g) make placement arrangements for the child or remove a child from the home; or (h) provide a "message service" for parents to communicate with each other.

VI. PRE-SERVICE TRAINING REQUIREMENTS (Former rule 910)

1. Pre-Service Training Requirements for New Guardians Ad Litem (Former Rule 910.01)

The purpose of pre-service training is to equip guardians ad litem with the skills, techniques, knowledge, and understanding necessary to effectively advocate for the best interests of children. To be listed on a panel of approved guardians ad litem, each person shall satisfy the following pre-service training requirements:

- (a) attend a minimum of 40 hours of pre-service training and demonstrate a comprehension of the topics discussed during the training;
- (b) if the person intends to serve in family court, attend an additional training course regarding family law matters and demonstrate a comprehension of the topics discussed during the training relating to family law matters; and
- (c) if the person intends to serve in juvenile court, attend an additional training course regarding juvenile law matters and demonstrate a comprehension of the topics discussed during the training relating to juvenile law matters.

2. Internship Requirements (Former Rule 910.03)

In addition to satisfying the pre-service training requirements set forth in these Standards, during the six months immediately following the date on which the person's name is listed on a panel of approved guardians ad litem, each person who intends to serve as a guardian ad litem in juvenile court shall make a reasonable, good faith effort to satisfy the internship requirements set forth in clauses (a) to (d), and each person who intends to serve as a guardian ad litem in family court shall make a reasonable, good faith effort to satisfy the internship requirements set forth in clauses (e) and (f), or submit to the program coordinator, or GAL Manager, written proof sufficient to verify that the person has previously satisfied the requirements.

- (a) Visit a shelter and foster home.
- (b) Visit the local social service agency and/or child protection office.
- (c) With the court's permission, observe a variety of juvenile court proceedings, including, but not limited to, an initial child protection hearing, a child protection review hearing, a foster care review hearing, and an administrative review.
- (d) Intern with an experienced guardian ad litem on at least two juvenile court cases.
- (e) Observe a variety of family court proceedings, including, but not limited to, a temporary relief hearing, a child custody hearing, and a domestic abuse hearing.
- (f) Intern with an experienced guardian ad litem on at least two family court cases.

VII. CONTINUING EDUCATION REQUIREMENTS (Former Rule 911)

Once a guardian ad litem is listed on a panel of approved guardians ad litem, the guardian ad litem may maintain that listing only by annually completing eight hours of continuing education. The continuing education requirement shall begin in the calendar year following the year in which the guardian ad litem is first listed on a panel of approved guardians ad litem and shall continue each year thereafter until such time as the guardian ad litem is no longer listed on the panel of approved guardians ad litem.

The District GAL Manager is the approving authority for certifying training for CEU purposes and may consult the State GAL Program Manager if there is any question as to the relevancy of a given training.

VIII. TRAINING CURRICULA; CERTIFICATION OF TRAINERS (Former Rule 912)

1. Pre-Service Training Curriculum (Former Rule 912.01)

The State Court Administrator, through the Office of Continuing Education in consultation with the State Guardian Ad Litem Program, shall develop a core curriculum to be used in the pre-service training of guardians ad litem and guardian ad litem program coordinators. The pre-service training curriculum should be reviewed and updated at least every three years.

2. Continuing Education Curriculum (Former Rule 912.02)

The continuing education curriculum shall include developments in relevant guardian ad litem, family court, or juvenile court topics.

3. Certification of Trainers (Former Rule 912.03)

The pre-service training and continuing education of guardians ad litem shall be coordinated by persons certified by the State Court Administrator through the State GAL Program Office, in consultation with the Education and Organizational Development Division. To be certified, a person shall satisfy the qualifications set forth in clauses (a) to (d).

- (a) The person shall have substantial knowledge, training, and experience regarding the roles and responsibilities of guardians ad litem.
- (b) The person shall understand the policies, procedures, and functions of family and juvenile court.
- (c) The person shall have substantial experience and be competent in providing technical training to adults.
- (d) The person shall complete the pre-service training program developed by the State Court Administrator, through the Education and Organizational Development Division in consultation with the State Office of the Guardian Ad Litem.

The State GAL Program, in cooperation with the State Court Administrator's Office Education and Organizational Development Division will periodically (once a year?) offer a certified "Train the Trainers" course. This curriculum will be periodically updated to include the latest in adult education theory and best practices for applied learning in a court environment.

IX. COMPLAINT STANDARD (Former Rule 907)

A party who wishes to file a formal complaint about the performance of a Guardian ad Litem in a Family or Juvenile Court proceeding must meet all the following criteria:

- They must be a party to the proceeding in which the GAL was appointed and about whom the complaint is being lodged.
- The complaint must be in writing to the District GAL Manager (e-mail is acceptable).

- The complaint may be filed at any time during the case, but will not be accepted later than 30 days from the date of issuance of the final order or discharge of the Guardian ad Litem on the proceeding in question.
- The complaint must specify the alleged malfeasance of duty: the specific rule, law or ethic that the GAL violated.
- The complaint must specify whether or not the alleged malfeasance of duty was brought to the attention of the court.
- Complaints that have been addressed by the court, or should be addressed by the court, will not be investigated by the District GAL Manager. (i.e. The court is the proper venue to address the factual basis for the Guardian ad Litem's recommendations, the thoroughness of their investigation, and their objectivity on the case).
- A complaint on a GAL that is no longer with the GAL program will not be investigated.

The District GAL Manager will promptly respond to a written complaint and will follow the complaint procedure established by the State Court Administrator and the Conference of Chief Judges. If either the complainant or the District GAL Manager assert a conflict of interest in conducting the investigation, the complaint may be directed to the State Guardian ad Litem Program, Office of the State Court Administrator, which shall then undertake the complaint investigation.

X. GAL Brochure (Former Rule 913)

An informational brochure is available in English, Spanish, Hmong, and Somali at the GAL website at: www.courts.state.mn.us GAL Program.

XI. EFFECTIVE DATE

This policy is effective January 1, 2005.